

DANIEL PARKER.

[To accompany bill H. R. No. 107.]

MARCH 5, 1840.

Mr. GOGGIN, from the Committee on Military Affairs, made the following

REPORT:

The Committee on Military Affairs, to whom was referred the memorial of General Daniel Parker, report:

That, during the first session of the 24th Congress, and the second session of the 25th, the Committee on Military Affairs, which had under consideration the same subject now referred to this committee, made favorable reports thereupon, accompanied by bills in both instances, for the relief of General Daniel Parker, to the extent now asked.

Those reports appearing to have been drawn with much care, and after a minute examination into all the facts of the case (which have been examined also by this committee with equal attention), are referred to as a part of this report, and as containing its views at length. The last of these reports more particularly embodies the opinions of this committee in the following words:

"The memorialist sets forth that, under the act entitled 'An act for the better organization of the general staff of the army of the United States,' passed the 3d day of March, 1813, he was appointed Adjutant and Inspector General, with the rank, pay, and emoluments of a brigadier general; that he was the only incumbent of that office from the passage of that law to the reduction of the army by the 'Act to reduce and fix the military peace establishment of the United States,' passed the 2d of March, 1821; that, in the settlement of his accounts, he has not received all the emoluments allowed to other brigadier generals of the army; that, while the accounting officers of the Treasury have acknowledged the justice and equity of his claim, they have not felt themselves authorized to make such further allowance for forage, fuel, quarters, and rations, as has been made to others. He further states that, when his services as Adjutant and Inspector General ceased, under the provisions of the last-recited act, he was assigned to the office of Paymaster General of the army, and discharged the duties of the same until the completion of the organization of the army under that act, when his public services terminated; leaving him justly and equitably entitled to such pay and allowances for fuel and quarters as have been allowed and paid to his successor in that office. He also claims the three months' pay provided by the thirteenth section of the act of the 2d of March, 1821. He asks that an act may be passed directing his pay accounts to be

settled upon just and equitable principles, and that he may receive whatever may have been paid to other officers of his rank.

"1st. The petitioner claims pay for double rations from the 30th of September, 1818, to the 31st of May, 1821.

"2d. Pay for fuel and quarters while he acted as Adjutant and Inspector General, from the 6th of March, 1816, to the 30th of September, 1818.

"3d. An allowance for fuel and quarters while he acted as Paymaster General.

"4th. Three months' extra pay, under the act of 1821, as a disbanded officer.

"In regard to the first claim, it appears that General Parker charged, and received of Paymaster Leslie, a commutation of double rations, from the 30th September, 1818, to the 31st of May, 1821, amounting to \$2,337 60. This sum was allowed to Paymaster Leslie by the accounting officers, but disallowed to General Parker, and charged to his personal account. Some time after, General Parker's account was reported for suit. An action was brought against him, and judgment was rendered against him, both in the Circuit and Supreme Courts. The presiding judge of the Supreme Court says, 'that there can be no controversy about double rations, if the President makes the allowance. He may issue the order himself, or it may be done by the Secretary of War, with his approbation.' The opinion of the court appears to have been founded upon the considerations, that no law imperatively required the allowance; that the President had not specially granted it; and that this case did not come within the regulations of the War Department.

"After the suit terminated against General Parker, he applied to the Secretary of War, who, in 1831, with the opinion of the Supreme Court before him, made the following order, to wit:

" 'General Parker was appointed Adjutant and Inspector General, in both of which capacities he acted. The law gave to this officer the pay and emoluments of brigadier general. The profits of the office were, of course, contingent. If a brigadier general received fuel, and quarters, and double rations, so too should General Parker. Every brigadier in the service did receive this allowance. Major Nourse and Colonel Jones, who performed the duties of the office since the reduction in 1821, also received double rations. Upon principles of equal justice, then, they should not, and ought not, to be denied to General Parker.

" 'J. H. EATON.'

"In pursuance of the above order, the Second Auditor passed the suspended item for double rations, from the 30th of September, 1818, to the 31st of May, 1821, \$2,337 60; but the Second Comptroller refused to sanction it, on the ground that it was retrospective in its operation.

"The allowance of double rations rests upon the construction of the fifth section of the act of the 16th March, 1802, and of the regulations and orders of the executive departments, issued in pursuance of that section. This construction has been a subject of much diversity of opinion with the different executive officers, as well as others; and its progress has received, as it deserves, the careful examination of your committee.

"The fifth section of the act of March, 16th, 1802, authorized the President to allow to the commanding officers of each separate post such ad-

ditional number of rations as he might from time to time direct, having respect to the special circumstances of each post.

"On the 25th of August, 1812, the President directed that generals commanding separate armies should be allowed double rations. The *headquarters of a separate army* were, by this order, decided to be a *separate post*.

"In February, 1814, the President directed that generals and other officers commanding districts should be allowed double rations; and the *headquarters of districts* were thus decided to be *separate posts*.

"In March, 1816, Mr. Crawford, then Secretary of War, issued a regulation allowing double rations to generals and other officers commanding military departments, and to all officers commanding permanent posts and garrisons, separate from the stations of commanding officers of departments, and which involved the expense of separate commands. The *headquarters of military departments* were then construed to be *separate posts*.

"In May, 1818, Mr. Calhoun, Secretary of War, with the approbation of the President, allowed double rations to the Chief Engineer stationed at Washington; and, on the 27th July, 1821, the same allowance was made, to commence with that day, to the Quartermaster General, the Commissary General of Subsistence, and the chief of the Ordnance Department, each exercising a separate military jurisdiction. These regulations have been sanctioned by the decisions of the accounting officers; and the *headquarters of each branch of the staff, exercising separate and independent jurisdiction*, have been thus decided by the Executive to be a *separate post*, within the meaning of the law.

"The present revised regulations, approved by the President and published by the Secretary of War in 1835, extend this allowance to the officers in charge of the military bureaus at the city of Washington, including the Inspectors General. Up to the 27th of August, 1831, it had been usual to give these regulations and orders a retrospective operation. On that day, the regulation made in Major Belton's case, confining allowances to a prospective effect, was issued in general orders on the 31st of August, 1831, and has continued in force to this time.

"Your committee deem it unnecessary to go into the argument, as to the intention and legal construction of the fifth section of the law of March, 1802, which could only be required on the question of repealing the present regulations of the War Department upon this subject. Certain it is, that if the practical construction which has since obtained had prevailed during the period of General Parker's service, he would have been allowed that which he now claims.

"The order of Secretary Eaton, in June, 1831, directing the claim to be allowed, it was supposed would supply the want of Executive direction, which was the original objection to its allowance; but the claim was still disallowed, on account of the retrospective effect of that order. The committee, without intending to sanction the propriety or legality of making such orders, consider it sufficient, in this case, that, to a date subsequent to this order, it had been, with few exceptions, the practice of the Executive to make such retrospective allowances.

"The committee are of the opinion that this claim of General Parker comes within the reason of the law, as it has been construed, if not within its letter, and cannot see the justice or policy of excluding the petitioner from an allowance which has been granted to the other brigadiers of the army.

"2d. General Parker claims pay for fuel and quarters while he acted as Adjutant General, from the 6th of March, 1816, to the 30th of September, 1818.

"The right of the Adjutant General to fuel and quarters is derived from the regulations of the War Department, approved by the President, and sanctioned and authorized by the ninth section of the act of the 24th of April, 1816. 'This act declares that 'the regulations in force before the reduction of the army (which was on the 3d of March, 1815) shall be recognised as far as the same shall be found applicable to the service, subject, however, to such alterations as the Secretary of War may adopt, with the approbation of the President.' Quarters and fuel were allowed the Adjutant and Inspector General by regulation before the passage of this act, and were subsequently continued to that officer by general regulations of the army. There can, therefore, be no doubt of the legal right of the Adjutant and Inspector General to fuel and quarters.

"The claim of the petitioner was presented to the accounting officers on the 30th of April, 1825, and disallowed on the ground that he had received, under Mr. Crawford's order, a commutation of double rations, in lieu of fuel and quarters, for the whole period embraced in his claim.

"The petitioner urges that the above order of Mr. Crawford was endorsed on his account, which was settled up to the 6th of March, 1816, and had only a retrospective operation; that on that day the general regulations of the 6th of March, 1816, were issued, extending the allowance of double rations to the other brigadiers of the army; after which he was paid double rations under those regulations, until the allowance to him was stopped in 1818, by Mr. Calhoun; that furnishing fuel and quarters belonged to the Quartermaster's department; and, there being no Quartermaster at Washington, he could not receive them in kind until the 30th of September, 1818, after which he did receive them from the Quartermaster General.

"On the 9th of February, 1829, General Parker again presented his claim to the accounting officers, with the following endorsement on the voucher, by General Porter, Secretary of War: 'This account being for personal allowances to General Parker, as an officer of the army in the regular course of service, it should be settled upon the principles observed in the settlement of other parallel cases at the time.'

"The claim was again disallowed by the Auditor, upon the ground that there were no parallel cases to warrant its allowance.

"The Second Comptroller, R. Cutts, was of a different opinion, inasmuch as the above order of General Porter referred to the order of Mr. Calhoun, of the 12th of May, 1818, which is as follows: 'Until otherwise ordered, the Chief Engineer, while resident at Washington, will be allowed at the rate of nine hundred and twelve dollars a year, in lieu of fuel and quarters. He will also receive double rations.'

"The Second Comptroller accordingly made the following decision on the account:

"In conversation with the President and Secretary of War, with regard to the within claim of fuel and quarters, it was understood to be their opinion, that, inasmuch as a similar claim had been allowed and paid, the basis of the present claim, it ought to be allowed; it is, therefore, admitted."

"This account, with the endorsement, remained in the Second Comptroller's Office until after the then Comptroller (Cutts) had retired from it. Mr. Hill, who succeeded him, on the 12th of October, 1829, addressed a letter

to the Third Auditor, stating that a decision once had in this office was binding, unless founded on error in fact, and requesting the amount of General Parker's account for fuel and quarters to be passed to his credit. No answer was given to this letter.

"The Attorney General (Berrien) gave an opinion in the case, that the decision of Second Comptroller Cutts was not final, inasmuch as the account remained in the office after he had retired from it.

"The case was subsequently referred to the War Department; and, on the 8th of October 1830, the following endorsement was made on the account by Mr. Randolph, the acting Secretary of War: 'The principle of allowing a commutation for double rations, as well as for fuel and quarters, was established by regulation of the 12th of May, 1818, issued by Mr. Calhoun, the Secretary of War. This regulation was made applicable to General Parker's case, by a decision of General Porter, in January, 1829; and the late Second Comptroller admitted the amount in the case, of \$2,416, which was confirmed by his successor, Mr. Hill. There is now no disposition to arrest these decisions, and the item which is allowed will pass to the credit of General Parker.'

"On the 14th of the following December, Mr. Eaton, the Secretary of War, endorsed on the account as follows: 'General Parker's case having been decided by the acting Secretary of War, no further action appears necessary than for the Comptroller to pass the item to the credit of General Parker.'

"On the 31st of the same month, a portion of the account (the rest referring itself to the Third Auditor) was reported by the Second Auditor to the Second Comptroller, and was disallowed by the Comptroller.

"On the 17th of May, 1834, the opinion of Mr. Butler, the present Attorney General, was taken in the case. He gave it as his opinion, 'that the acts and decisions of the former Secretaries of War are sufficient, until reversed and countermanded, to authorize and require the accounting officers to settle and audit the claim of General Parker for an allowance to the amount of \$2,416 in lieu of fuel and quarters.'

"On the 22d of May, the account was again reported by the Second Auditor, in favor of General Parker.

"On the 5th of June the account was referred by the Second Comptroller to Mr. Cass, Secretary of War, and Mr. Cass returned it with the following answer: 'It is not necessary to examine the case of General Parker further than the action of my predecessors on it in October and December, 1830. By the opinion of the Attorney General, given in this case, on the 17th of May last, that action of my predecessors is perfect, as it respects this department, and constitutes the voucher for the accounting officers in settling General Parker's claim, unless reversed and countermanded by the Secretary of War. Such reversal I consider it wrong to make; and as the allowance to General Parker was made before the general order in the case of Major Belton, it is, therefore, not affected by it. General Parker's case is returned, that he may be credited according to former decisions, and the opinion of the law officer of the Government.'

"The only difficulty in the merits of this question has been, whether General Parker did not receive, in lieu of fuel and quarters, a commutation of double rations? This was the case, by the special order of Mr. Crawford, up to the general regulations of the same date (March 6, 1816), which gave the allowance of double rations to other brigadier generals of the army. After which time he conceived himself entitled to the allowance of

double rations, not in lieu of fuel and quarters, but on its own account. Now, if the committee are right in the opinion that they have expressed in a preceding part of this report, that General Parker ought to have the allowance of double rations, it follows, of course, that he should receive fuel and quarters.

"The committee, without touching the question of the relative jurisdiction of the accounting officers and other branches of the Executive, without regard to the distinctions and legal exceptions which, on some occasions, prevented the allowance; and giving full credit to the officers who favored, and to those who persisted in opposing, this claim, are of opinion that it should be allowed by Congress.

"3d. The petitioner claims an allowance for fuel and quarters while he acted as Paymaster General.

"The committee are of opinion that this claim is founded both in law and equity. The regulations of the army gave fuel and quarters to the Paymaster General, which regulations were sanctioned by the 9th section of the act of the 24th of April, 1816, as is shown in a preceding part of this report. Doubts, however, were entertained in regard to Paymaster General Towson; and to remove those doubts, Congress, on the 13th March, 1832, passed an act authorizing and directing the Quartermaster General to pay Nathan Towson, Paymaster General of the United States, his accounts for fuel and quarters for such time as he has not received the allowance since his appointment to that office. By virtue of this act, the allowance was paid to Colonel Towson, for periods of time both before and after that for which General Parker acted in that capacity.

"There can be no distinction in the two cases, and your committee can see no propriety in withholding from one the compensation granted to the other.

"4th. He claims three months' extra pay, under the act of 1821, as a disbanded officer.

"By the 13th section of the act of the 2d of March, 1821, "to reduce and fix the peace establishment of the United States," it is provided that there shall be allowed and paid to each commissioned officer, who shall be discharged from the service of the United States in pursuance of this act, three months' pay, in addition to the pay and emoluments to which he may be entitled at the time of his discharge.

"The petitioner was not *discharged from the service of the United States* when he ceased to do the duties of Adjutant and Inspector General; but, under the expectation of being appointed Paymaster General, he performed the duties of that office until the close of the next session of Congress, when, not being nominated to the Senate, his services expired. It may not be critically true that he was discharged from the service of the United States, in pursuance of the act of March 2, 1821; yet his discharge certainly happened in consequence of that act. His temporary continuance in the service as Paymaster General, may have taken him out of the letter of the law; but his just expectation of being permanently appointed to that office, and his sudden disappointment and discharge from service, bring him fully within the spirit of the law. Other officers who were discharged had time to prepare for entering on civil employments. General Parker was suddenly left without employment; and the reason for the allowance, in his case, has double strength."

And, therefore, to enable the accounting officers of the Treasury Department to carry out the objects of the foregoing report, the committee submit a bill.

